IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2838 OF 1987

M/s.Polymer Plastics ....Plaintiff
V/s.
M/s.Champion Engineering Stores ....Defendant

Mr.Prakash Gunwani i/b Mr.S.N. Shah for the Plaintiff.
None for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 7TH SEPTEMBER, 2006.

P.C. :

1. The suit is filed to recover the amount of Rs.60,781=80 ps. being the price of the goods sold and delivered by the Plaintiff to the Defendant.

2. The goods were sold under thirteen invoices.

3. The Defendant has filed the written statement raising three defences. Firstly, the Defendant has denied that the Plaintiff firm is registered under the Indian Partnership Act. Secondly, it was contended that according to the terms and conditions agreed upon, it was agreed that the Plaintiff would give the Defendant turn over commission/discount at the rate of 5% on the basis of the list price besides the special

discount in the same manner as the Plaintiff was giving to other merchants in the market. Thirdly, it is denied that the Defendant was generally liable to submit sales tax form in form No.14.

4. The following issues are framed on 7.9.2006 :

ISSUES

1) Does the Plaintiffs prove that they are registered Partnership Firm as contended in paragraph 1 of the plaint ?

2) Does the Plaintiffs prove that they were entitled to 5% turn over commission as contended in paragraph 4 of the written statement ?

3) Whether the Defendants had agreed and/or in any event jointly and severally liable to furnish the sales tax form No.14 to the Plaintiffs in respect of the suit invoices/transactions ?

4) Do the Plaintiffs prove their claim ?

5) Do what reliefs, if any, are the Plaintiffs entitled ?

6) Generally ?

5. The Plaintiff had taken out a Summons for Judgment. By an order dated 29.2.1988 the Defendant was granted leave to defend conditional upon to deposit Rs.25,000/- which the Defendant did on 24.3.1988.

6. The Plaintiff has examined one Shishir Dalsukhrai Shah, the partner of the Plaintiff by filing his affidavit in lieu of the examination in chief. The witness has confirmed the truth and correctness of what is stated therein. The Plaintiff has also tendered a compilation of the documents which are taken on record and marked Exhibit "A" collectively.

Re. Issue No.1 :

7. The witness has deposed to the effect that the Plaintiff is the partnership firm registered under the Indian Partnership Act. He has produced the extract from the Registrar of Firms. In the

circumstances, the Plaintiff has established that it is duly registered under the Indian Partnership Act. Issue No.1 is therefore answered in the affirmative and in favour of the Plaintiff.

Re. Issue No.2 :

8. As far as recovery of the discount is concerned, the Plaintiff has already given credit for the same to the Defendant. The Defendant has not appeared. There is no dispute in this regard.

9. The onus of proving the alleged special discount is on the Defendant. The Defendant has not proved the same. In the circumstances, issue No.2 is answered in the negative so far as the said discount is concerned.

Re. Issue No.3 :

10. In paragraph 6 of the affidavit in lieu of examination-in-chief, the witness has specifically stated that the Defendant had agreed to furnish the sales tax form. There is no cross-examination in this regard. In the circumstances, issue No.3 is answered in the affirmative and in favour of the Plaintiff.

Re. Issue No.4 :

11. The invoices and delivery challans have been proved. The defences have been rejected by me. In the circumstances issue No.4 is answered in the affirmative and in favour of the Plaintiff.

Re. Issue Nos.5 and 6 :

12. The suit is decreed.

13. The Plaintiff shall be entitled to withdraw the amounts deposited in the Court together with such interest thereon, if any, four weeks after the period of limitation for filing an Appeal expires.

Refund as per rules.